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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,707	01/21/2004	Sven Erik Hedberg	P03,0564	3713

26574 7590 09/29/2005

SCHIFF HARDIN, LLP  
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EXAMINER

ROSENZWEIG, JASON

ART UNIT PAPER NUMBER

3762

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/761,707	HEDBERG ET AL.	
	Examiner	Art Unit	
	Jason E. Rosenzweig	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-10 is/are rejected.
- 7) ☒ Claim(s) 5, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>06072004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in the current application, filed on 03/31/2003.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mika (US 6360126) et al.
4. Regarding claim 1, Mika discloses: A pacing system comprising; a pulse generator (Element 344) for generating pacing pulses to chambers of a heart; a plurality of sensing elements adapted to respectively receive and sense IEGM signals from the heart chambers; a control unit connected to said sensing elements for blanking sensing of said IEGM signals in respective blanking intervals following each delivery of a pacing pulse by said pulse generator; and a signal reconstructing unit connected to said sensing elements for reconstructing the IEGM signal from one of said multiple chambers in the blanking interval following delivery of one of said pacing pulses (Col 20, Ln. 26). Mika does not disclose specifically a multi-chamber pacing system however it is

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however mentioned in the disclosure that the system could be adapted to pace multiple chambers by someone of ordinary skill in the art (Col 16, Ln. 45). It would therefore be obvious to adapt the system based upon the suggested use by Miki to adapt the disclosure to a multi-chamber pacing system.

5. Regarding claims 3 and 4, Mika discloses: A pacing system as claimed in claim 1 wherein said signal reconstructing unit reconstructs said IEGM signal in said blanking interval by using interpolation methods to interpolate values for replacing the eliminated data points during signal blanking. Mika does not specifically mention determining an instantaneous slope of said IEGM signal at a beginning of said blanking interval, and by linearly extrapolating said IEGM signal in said blanking interval using said instantaneous slope however it is understood that using a said slope in to extrapolate values in-between two points in space is known to those skilled in the art as linear interpolation and it would be obvious to use any standard method of interpolation techniques in order to replace values which were blanked out during a pacing pulse.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-3, and 6-10 are rejected because claims 1-12 of copending Application No. 10/813776 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, and 6-10 of the current application. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming the same invention however the claim language has been slightly modified.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Allowable Subject Matter***

8. Claims 5, 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Conclusion**


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason E. Rosenzweig whose telephone number is (571)272-5559. The examiner can normally be reached on Mon-Fri 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason Rosenzweig  
Patent Examiner  
Art Unit 3762



Robert Pezzuto  
Supervisory Patent Examiner  
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